

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 25 1995

In the Matter of

Amendment of Parts 2 and 90 of the	)	PR Docket No. 89-553
Commission's Rules to Provide for the	)	
Use of 200 Channels Outside the	)	
Designated Filing Areas in the	)	DOCKET FILE COPY ORIGINAL
896-901 MHz and the 935-940 MHz Bands	)	
Allotted to the Specialized Mobile	)	
Radio Pool	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act -	)	
Competitive Bidding	)	
Implementation of Sections 3(n)	)	GN Docket No. 93-252
and 322 the Communications Act	)	

COMMENTS OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Comments to the Second Further Notice of Proposed Rulemaking, FCC 95-159, released on April 17, 1995 ("Notice"). The Notice proposes competitive bidding rules for auctioning licenses in the 900 MHz Specialized Mobile Radio (SMR) service. These rules include provisions for the treatment of designated entities, including rural telephone companies and definitions of qualifying small businesses and rural telephone companies for purposes of the 900 MHz service.

DISCUSSION

NTCA is a national association of approximately 500 small local exchange carriers ("LECs") providing telecommunications services to interexchange carriers and subscribers throughout

rural America. NTCA supported removal of the wireline restriction against telephone company provision of SMR services. Its members are interested in providing wireless services like SMR and welcome removal of the restrictions.

Section 309(j) of the Communications Act ("Act") requires that the Commission design competitive bidding rules that (1) promote the rapid deployment of spectrum based services to rural areas and (2) disseminate licenses among a wide diversity of applicants. The Commission proposes to comply with Section 309(j) in the 900 MHz auctions by establishing preferences which apply to all applicants that meet a small business threshold. Small businesses are defined as those with less than \$3 million in average gross revenues for the preceding three years. Notice, ¶ 135. Under the proposal, any entity meeting the threshold would be eligible for a 10% bidding credit, a reduced down payment amounting to 5% of the winning bid, and installment payments due over the term of the license with interest fixed at a rate equal to the ten-year U.S. Treasury rate plus 2.5%.

The Notice also includes an additional provision for rural telephone companies. It allows a local telephone company having 100,000 or fewer access lines to partition 900 MHz MTA licenses. Companies may form consortia consisting entirely of rural telephone companies to participate in the auctions and then partition the licenses won among consortia participants or they may acquire partitioned licenses from other licensees through private negotiation. Notice, ¶ 145.

NTCA supports the Commission's proposal to permit partitioning by rural telephone companies. Partitioning will help bring wireless services to rural areas rapidly and preserve for rural telephone companies the benefits Congress established in Section 309(j) of the Act. The proposal would require that partitioned areas conform to established geopolitical boundaries, include all portions of the wireline service area of the rural telco that lies within the service area, and be reasonably related to the rural wireline area.

The proposed rule, 47 C.F.R. § 90.813(d)(3), also states in a note that a partitioned service area will be presumed to be reasonably related to the wireline area if the partitioned service area contains no more than twice the population overlap between the telephone company's wireline service area and the partitioned area. NTCA recommends that the Commission eliminate the presumption and the note explaining it in 47 C.F.R. § 90.813(d)(3). Instead, the Commission should make it clear that all partitioning agreements will be approved so long as the rural telco's partitioned area contains its wireline service area.

Elimination of the presumption will facilitate the Commission's mandate to enact rules that speed deployment of service to rural areas. Without the restrictions of the presumption, parties to consortia and agreements to partition will have the needed flexibility to fashion service areas that facilitate efficient operations. At the same time, the Commission can be assured that partitioning will meet the needs

of the more sparsely populated areas since these are either in the wireline service areas of rural telcos or contiguous to them. Elimination of the presumption will also do away with case by case waiver procedures that can retard service and result in unnecessary costs that must be ultimately born by the service. For these reasons, NTCA recommends changing 47 C.F.R. § 90.813(d) by eliminating 47 C.F.R. § 90.813(d)(3) and the explanatory note that follows.

NTCA recommends that the Commission adopt a small business definition that provides for a \$15 million threshold instead of the \$3 million proposed. The threshold should be set to attract a greater number of small businesses that have the initial capability to assess the potential of the 900 MHz service and to prepare for and participate in the auctions. A \$3 million gross revenue standard threshold is too low and does not comply with any Small Business Administration approved definition of a small business. There is no record indicating that a business with gross revenues of \$3 million can raise any of the capital required to build a single 10 channel system in any part of a licensed MTA. The Commission should assure itself that its rules will in fact provide a chance at an "economic opportunity" to the intended beneficiaries of Section 309(j)(4)(C). The bidding credits and installment payment measures adopted to create "economic opportunity" will be meaningless if the threshold only embraces entities that could not in any event, meaningfully

compete for licenses or comply with licensing and construction requirements.

CONCLUSION

NTCA requests that the Commission enact rules consistent with these comments.

Respectfully submitted,

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ASSOCIATION

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May 23, 1995

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in PR Docket No. 89-553, PP Docket No. 93-253, and GN Docket No. 93-252 was served on this 23rd day of May 1995, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

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